

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOHN H. BENGE, JR.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 05-550-GMS
	)	
RICK KEARNEY,	)	
Warden,	)	
	)	
Respondent.	)	

**ORDER**

1. In August 2005, petitioner Benge filed two habeas petitions challenging different convictions. The first petition, Civ. Act. No. 05-550-GMS, asserts five claims for relief and challenges Benge's October 10, 2003 conviction for second degree assault, first degree criminal trespass, and offensive touching. (D.I. 1 in Civ. Act. No. 05-550.) The second petition, Civ. Act. 05-551-GMS, asserts two claims for relief and challenges Benge's March 19, 2004 conviction for unlawful electronic interception, attempted unlawful electronic interception, and third degree burglary. (D.I. 1 in Civ. Act. No. 05-551-GMS.)

2. The State filed a response to Civ. Act. No. 05-550 on December 28, 2005. (D.I. 18 in Civ. Act. No. 05-550). The State filed a response to Civ. Act. No. 05-551 on February 1, 2006. (D.I. 24 in Civ. Act. No. 05-551). During its review of Benge's habeas proceedings, the court discovered that the State appears to have misnumbered its responses to the two proceedings. More specifically, the answer numbered Civ. Act. No. 05-551-GMS and filed in Civ. Act. No.

05-551-GMS actually addresses the five claims raised in Benge's petition numbered Civ. Act. No. 05-550; therefore, the response should have been numbered Civ. Act. 05-550-GMS and filed in Civ. Act. No. 05-550-GMS. Similarly, the response numbered Civ. Act. No. 05-550-GMS and filed in Civ. Act. No. 05-550-GMS actually addresses the two claims raised in Benge's petition numbered Civ. Act. No. 05-551-GMS; therefore, the response should have been numbered Civ. Act. No. 05-551-GMS and filed in Civ. Act. No. 05-551-GMS.

3. To make matters even more confusing, it appears that Benge followed the State's misnumbering when he filed his reply briefs to the State's answers. More specifically, Benge's reply brief numbered Civ. Act. No. 05-551-GMS and filed in Civ. Act. No. 05-551 should have been numbered Civ. Act. No. 05-550-GMS and filed in Civ. Act. No. 05-550-GMS. Similarly, Benge's reply brief numbered Civ. Act. 05-550-GMS and filed in Civ. Act. No. 05-550-GMS should have been numbered and filed in Civ. Act. 05-551-GMS.

Therefore, IT IS HEREBY ORDERED that:

1. The clerk of the court shall strike the State's response and state court record filed in this proceeding. (D.I. 18; D.I. 19.)

2. The clerk of the court shall strike Benge's reply brief. (D.I. 25.)

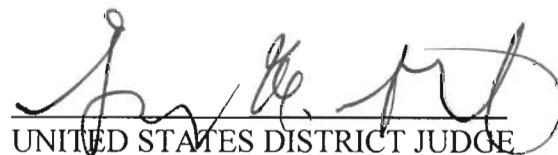
3. No later than *October 31, 2006*, the State shall file a response and state court record properly numbered as Civ. Act. No. 05-550-GMS that respond to the five claims asserted in Benge's habeas petition (D.I. 1.) and his brief in support (D.I. 3.). The State shall not include additional arguments or briefing.

4. No later than 30 days after the State files its correctly numbered response and state court record, Benge shall file a reply brief and attachments properly numbered as Civ. Act. No.

05-550-GMS that relate to the arguments asserted by the State in its response. Benge shall not include additional arguments or briefing.

4. Considering the misfilings in the instant habeas proceeding, Benge's "Motion for a Determination under Habeas Corpus Rule 8(a) and for Summary Judgment under Rule 56(a) of the Federal Rules of Civil Procedure" is DENIED WITHOUT PREJUDICE as premature. (D.I. 24.)

Dated: *Sept 28*, 2006

  
UNITED STATES DISTRICT JUDGE

